IN THE HIGH COURT OF UTTARANCHAL,

AT NAINITAL.
A.O. No. 164/2001
(Old No. 1280/1993)

1. Union of India through General Manager, N.E. Railway, Gorakhpur.
2. Dy. Chief Engineer (Construction) N.E. Railway, Lucknow.
3. Chief Administrative Officer, (Construction) N.E. Railway, Gorakhpur … Objectors/ Appellants.

Vs.

1. M/s Mittal Builders and Suppliers, Co. Moh. Kila Kashipur, District Nainital. through its Partner Manoj Jain, S/o Padam Sain Mittal, R/o Mohalla Kashipur, District Nainital .. O.P./Respondent.

(Hon'ble B.C. Kandpal, J.)

This appeal, U/S 39(1) of Arbitration Act, 1940, has been preferred by the objectors/appellants, against the judgment and order dated 6-9-1993, passed by Civil Judge, Nainital, in Misc. Case No. 2 of 1993, Union of India through General Manager, N.E. Railway, Gorakhpur and others Vs. M/s Mittal Builders and Suppliers.

2- The brief facts of the case are that open tender notice No.4/Dy. C.E./Con/LJN/OT/7/87 dated 20-7-1987 was invited by the appellants for miscellaneous items including earth work. In pursuance of the aforesaid tender notice, agreement was entered into between the respondent M/s Mittal Builders and Suppliers and appellants. In the agreement there was a clause for referring dispute between the parties before the Sole Arbitrator. There arose dispute between the parties with regard to amount paid to the respondent under the aforesaid agreement. Thereupon the respondent filed a suit (Case No. 194/1991) in the court of Civil Judge, Nainital, U/S 8 read with Section 20 of the Arbitration Act for appointment of Arbitrator. The Civil Judge, Nainital vide judgment and order dated 23-3-1992 appointed Sri R.K. Goel, Chief Bridge Engineer, N.E.

Railway Gorakhpur Sole Arbitrator who gave his award dated 3-3-1993. The Arbitrator awarded a sum of Rs. 1,75,107=39P in favour of the respondent, including an amount of Rs. 41,103-98P. towards interest on the amount due. The interest awarded was for the period prior to reference and also awarded interest @ 6% per annum in case the amount under the award is not paid within two months from the date of the award.

3- Thereafter, the award dated 3.3.1993 given by the Sole Arbitrator was sought to be made rule of the court and the case was registered as Arbitration Case No. 36/1993. Parties filed objections against the impugned award. The respondent/ Mittal Builders and Suppliers alleged that the rate of interest awarded by the Arbitrator was very meager and it should be awarded @ 12% per annum. The Objector/appellant raised objection that the Arbitrator had no right to award future interest on the award money.

4- The objections were rejected by the Civil Judge Nainital vide impugned order dated 6-9-1993 passed in Misc. Case No. 2/1993.

5- The learned Civil Judge, Nainital vide judgment and order dated 6-9-1993, passed in Arbitration Case No. 36 of 1993, made the impugned award dated 3.3.93, rule of the court.

6- Feeling aggrieved, against the order dated 6-9-93 passed in Misc. Case No. 2/1993, rejecting the objections, the objectors/appellants have preferred the appeal before the Allahabad High Court, which has been transferred to this Court, after creation of new State for disposal.

7- None has appeared on behalf of the respondents. Heard Ms. Krishi Shukla, learned counsel for the appellants and perused the record.

8- The sole argument advanced by the learned counsel for the appellants is that the Arbitrator has awarded future interest on the

award money @6% per annum, whereas he had no right to award such interest, hence the interest so awarded be set aside.

9- I am of the view that the submission raised by the learned counsel for the appellants has got no force.

10- By U.P. Civil Laws (Reforms and Amendment) Act, 1976, in the First Schedule of Arbitration Act, after paragraph –7, paragraph 7-A has been inserted, which reads as under:-

> "7-A. Where and in so far as an award is for the payment of money, the arbitrators or the umpire may, in the award, order interest at such rate as the arbitrators or umpire may deem reasonable to be paid on the principal sum awarded, from the date of the commencement of the arbitration, as defined in sub-section(3) of Section 37, to the date of award, in addition to any interest awarded on such principal sum for any period prior to such commencement, with further interest at such rate not exceeding six per cent per annum as the arbitrators or umpire any deem reasonable on such principal sum from the date of the award to the date of payment or to such earlier date as the arbitrators or umpire may think fit, but in no case beyond the date of the decree to be passed on the award."

11- In view of he aforesaid provision, it cannot be said that the Arbitrator had no jurisdiction to award future interest. In the instant case the Arbitrator awarded interest @ 6% per annum, which cannot be said to be excessive.

12- No other point has been raised before me.

13- For the reasons aforesaid, the appeal being devoid of merit, is liable to be dismissed.

14- Accordingly the appeal is dismissed. The impugned order passed by the Civil Judge, Nainital is hereby confirmed.

(B.C. Kandpal, J.)

Dated: 19-12-2006

ISB